IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 492 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? No.

2 To be referred to the Reporter or not ? No.

3 Whether their Lordships wish to see the fair copy of the judgment ? No.

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No.

5 Whether it is to be circulated to the civil judge ? No.

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THE STATE OF GUJARAT - Applicant(s)
Versus
HARESH MANGAL - Respondent(s)

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Appearance :
MR KC SHAH APP for Applicant(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR AMIT N PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 06/12/2007

ORAL JUDGMENT :

1. Petitioner – State has preferred this Criminal Revision Application u/s 397 read with Section 401 of the Code of Criminal

Procedure, 1973 (hereinafter referred to CR. P.C.) and challenged the order passed by learned J.M.F.C., Lunavada on 5-4-2006 below application Exh. 9 in Criminal Case No.309 of 2004, whereby the learned Magistrate allowed the application filed by the respondent – accused u/s 216 of the Cr. P.C. to alter charge from Section 326 to Section 324 of I.P. Code.

2. I have heard learned A.P.P. Mr. K.C. Shah for the applicant – State and learned advocate Mr. Amit Patel for the respondent.

3. It appears from impugned order that after considering materials placed before the Court, the learned Magistrate framed charge for the offence punishable u/s 326-498-A of the I.P. Code. The charge was framed on 10-8-2004 and as the respondent – accused denied having committed the offence, the matter was kept for recording of evidence.

4. The respondent – accused made application for alteration of charge before the trial court when the matter was pending for recording of evidence. It is not pleaded

in the application as to on what basis the application for alteration of charge was filed after framing of the charge. A charge is always framed after considering the evidence placed before the Court along with charge sheet. Learned Magistrate after considering the evidence produced before him framed the charge and has not assigned reason as to what evidence was found subsequent to framing of charge to alter the charge from Section 326 to 324. It appears from the impugned order that after considering the police papers and medical certificate produced before him the order was passed. The order does not indicate that those papers were not considered at the time of framing the charge. Therefore, no new evidence was placed before the Court for alteration of charge. In order to justify alteration of charge; learned Magistrate has elaborately discussed the medical papers and injuries recorded in the medical certificate. In my view, at the stage of framing of charge, the Court is not required to elaborately discuss the nature of evidence and its legal effect on the case. Therefore, learned Magistrate has committed error in passing the impugned order.

5. According to prosecution case injuries were caused to the victim by sharp cutting instrument like knife on neck. It appears that injury was caused on vital part of body by sharp cutting weapon. Therefore, learned Magistrate committed error in passing the impugned order in altering charge from Section 326 to Section 324 of the I.P. Code. Therefore, the impugned order passed by learned Magistrate is erroneous and perverse and the same is required to be set aside.

6. In view of above, this Criminal Revision Application is allowed and the impugned order dated 5-4-2006 passed by J.M.F.C., Lunavada below application Exh. 9 in Criminal Case no.309 of 2004 is set aside. It is, however, made clear that this order is passed on the basis of prosecution case with regard to nature of weapon used in the commission of alleged offence and injury caused to the victim. Therefore, the trial court shall proceed with case without being influenced by the observations made by this Court with regard to the injuries allegedly caused to the victim. Rule is made absolute. Interim relief granted earlier stands vacated.

(Bankim N. Mehta,J.)

/JVSatwara/